able cause will not be allowed to work a forfeiture. *Powell* v. *Morgan*, 2 Vern. 90; *Morris* v. *Burroughs*, 1 Atk. 399. But this applies only when there is no gift over. *Cleaver* v. *Spurling*, 2 P. Wms. 526; *Stevenson* v. *Abington*, 11 Wkly. Rep. 935. In this country, the tendency is to hold the condition valid without distinction between realty or personalty or as to gifts over. *Thompson* v. *Gaut*, 14 Lea (Tenn.) 310; *Matter of Estate of Hite*, 155 Cal. 436, 101 Pac. 443. Accordingly several courts have said that the law puts no restriction on a testator's right to make his bounty conditional upon abstention from litigation. *Donegan* v. *Wade*, 70 Ala. 501; *Matter of Estate of Garcelon*, 104 Cal. 570, 38 Pac. 414. Others, on the ground of public policy, to prevent wrongdoers in cases of undue influence or incompetency from dictating such terms as to stifle investigation, have arbitrarily construed all conditions not to apply to contests based on probable cause. *Jackson* v. *Westerfield*, 61 How. Pr. (N. Y.) 399; *Friend's Estate*, 209 Pa. St. 442, 58 Atl. 853. Whether or not this encroachment on freedom of disposition is warranted to its full extent, it would seem, as held in the principal case, to be justifiable in cases of alleged forgery, where the social interest is more obvious. But *cf.* *Moran* v. *Moran*, 144 Ia. 451, 123 N. W. 202.

WITNESSES — COMPETENCY AS TO PARTICULAR MATTERS — COMPETENCY OF HUSBAND AND WIFE TO BASTARDIZE ISSUE. — A husband's petition for annulment of marriage having been granted, the wife filed a cross-petition for the support of a child, conceived before marriage but born thereafter. The husband offered to testify that he was not the father of the child. *Held*, that he is not a competent witness. *Palmer* v. *Palmer*, 82 Atl. 358 (N. J., Ct. Ch.).

Originally, the testimony of husband and wife to non-access for the purpose of bastardizing the wife's issue was admissible, but required corroboration in certain cases. *Parish of St. Andrew* v. *Parish of St. Bride*, 1 Sess. Cas. K. B. 117. See *King* v. *Reading*, Cas. *t.* Hardw. 79, 82. Lord Mansfield altered the rule to one of incompetency. See *Goodright* v. *Moss*, 2 Cowp. 591, 594. In this form it became well established both in England and in America. *King* v. *Sourton*, 5 A. & E. 180; *Egbert* v. *Greenwalt*, 44 Mich. 245, 6 N. W. 654; *Tioga County* v. *South Creek Township*, 75 Pa. St. 433. The recent English cases, however, show some tendency to restore the earlier law. *In re Yearwood's Trusts*, 5 Ch. D. 545. But see *Aylesford Peerage*, 11 App. Cas. 1, 9. Furthermore the rule, if still in existence in England, is restricted to children begotten as well as born after marriage, which qualification does not exist in America. *Poulett Peerage*, [1903] App. Cas. 395; *Rabeke* v. *Baer*, 115 Mich. 328, 73 N. W. 242. In the principal case, the marriage having been annulled, the child would, in any event, be illegitimate at common law. *Plant* v. *Taylor*, 7 H. & N. 211. See *Zule* v. *Zule*, 1 N. J. Eq. 96, 100. A New Jersey statute, however, legitimizes the issue of annulled marriages. LAWS OF N. J. OF 1907, c. 216, § 1, cl. vi. The court is probably correct in holding that the rule, as laid down in America, applies to this situation. The strongest argument in favor of the rule, the unfairness to the child of permitting its parents to deprive it of its legal status seems as applicable here as elsewhere. But the rule itself is anomalous, and the arguments in its support are insufficient. See 3 WIGMORE, EVIDENCE, § 2064.